

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
KTNC License, LLC)	
)	CSR-6157-M
v.)	
)	
Charter Communications)	
)	
Request for Mandatory Carriage of)	
Television Station KTNC-TV,)	
Concord, California)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 28, 2003

Released: August 29, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. KTNC License, LLC ("KTNC"), licensee of television broadcast station KTNC-TV (Ch. 42), Concord, California ("KTNC-TV" or the "Station") filed the above-captioned must carry complaint against Charter Communications ("Charter"), for failing to carry KTNC-TV on its cable systems serving Gilroy, Morgan Hill and Santa Clara County, California.¹ No opposition to the complaint was received.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.² A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusive of

¹ Complaint at 1.

² 8 FCC Rcd 2965, 2976-2977 (1993).

³ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets base on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(c). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e).

others, based on measured viewing patterns.

3. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.⁴ One method of doing so is for a cable operator to establish that a subject television signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁵ Should a station fail to provide the required over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a television station may provide a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁶

III. DISCUSSION

4. In support of its complaint, KTNC-TV states that it is a full power television station licensed to Concord, California, which is in the San Francisco-Oakland-San Jose DMA.⁷ It states further that Charter operates cable television systems, which are also in the San Francisco-Oakland-San Jose DMA.⁸ KTNC-TV asserts that it formally requested Charter to commence carriage of its signal on the three cable systems at issue, and that Charter initially responded that it would add KTNC-TV to the systems on or before January 1, 2003.⁹ KTCN-TV asserts further that Charter changed that date to April 1, 2003 and, then, to June 3, 2003.¹⁰ KTCN-TV maintains that on April 3, 2003, Charter informed the Station that it would not add KTCN-TV to the systems in question because two other stations Charter was carrying, but are licensed to another DMA, had each filed a Petition for Special Relief with the Commission seeking mandatory carriage status on the same systems here at issue.¹¹ KTCN-TV states that Charter has also indicated that it will not remove other non-must carry stations, licensed to the Monterey-Salinas DMA, it now carries to accommodate KTCN-TV's must carry request.¹² In addition, KTCN-TV contends that Charter has not met the requirement that it provide one-third of its usable activated channel capacity to local stations.¹³ KTCN-TV requests that the Commission order Charter to commence carriage of its signal on the cable systems in question.¹⁴

5. Section 76.55(e) of the Commission's rules provides that commercial television broadcast stations, such as KTCN-TV, are entitled to carriage on cable systems located in the same

⁴ See *Must Carry Order*, 8 FCC Rcd at 2990.

⁵ 47 C.F.R. § 76.55(c)(3).

⁶ *Must Carry Order*, 8 FCC Rcd at 2991.

⁷ Complaint at 2.

⁸ *Id.*

⁹ *Id.* and Exhibit Three (copy of an e-mail between two Charter employees that reads, in part: "[w]e received confirmation from Mark Beech late afternoon on Fri., Nov. 22 that the signal of KTCN-42 is received at the Charter Gilroy headend.").

¹⁰ *Id.* and Exhibits Four and Five.

¹¹ *Id.* and Exhibit Five

¹² *Id.* at 4.

¹³ *Id.* at 3.

¹⁴ *Id.* at 5.

DMA.¹⁵ As noted above, cable operators have the burden of showing that a commercial television station that it located in the same television market is not entitled to carriage.¹⁶ We find that Charter has failed to meet its burden. Thus, we find that KTCN-TV is entitled to mandatory carriage on the Charter cable systems at issue. Based on the foregoing, we grant KTCN-TV's complaint.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the must carry complaint filed by KTCN License, LLC, licensee of television broadcast station KTCN-TV, Concord, California, against Charter Communications **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that Charter **SHALL COMMENCE CARRIAGE** of the KTCN-TV signal on its cable systems serving Gilroy, Morgan Hill and Santa Clara County, California, within sixty (60) days from the date of the release of this *Order*.

8. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

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¹⁵ 47 C.F.R. § 76.55(e).

¹⁶ *See Must Carry Order*, 8 FCC Rcd at 2990.

¹⁷ 47 C.F.R. § 0.283.